



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

1138006
C-14J

03 FEB 2000

REPLY TO THE ATTENTION OF

C-14J

VIA OVERNIGHT MAIL

Mr. Shawn T. Canavan
Railroad Realty Services, Inc.
700 N. Second Street, 5th Floor
St. Louis, MO 63102

Re: Access Order to Property Known as Terminal Railroad
Association Right of Way at Dead Creek, Cahokia, Illinois

Dear Mr. Canavan:

Enclosed please find an Administrative Order for Access to the property known as the Terminal Railroad Association Right of Way at Dead Creek, Cahokia, Illinois. The U.S. Environmental Protection Agency ("U.S. EPA") and/or its representative (Monsanto and Solutia) plan to conduct removal activities at the above site because the Agency has determined that the site is contributing to upstream flooding of Dead Creek, which in turn is contributing to the release of hazardous wastes which are contained in Dead Creek flood waters. Flood waters containing hazardous wastes cause, among other things, an actual or potential threat of exposure of hazardous substances to human health and the environment. For this reason, U.S. EPA personnel or personnel of its representative, need access to your property.

Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA", as amended), gives the U.S. EPA and its representatives the authority to enter any property for the purpose of taking response actions to address the release or threatened release of hazardous substances, pollutants, or contaminants. Although U.S. EPA personnel may enter property without an owner's consent when entry is necessary to respond to a release or threatened release, it is U.S. EPA's practice to seek the owner's consent before entry onto the property. In this case, despite its good faith efforts, representatives of Monsanto and Solutia have been unable to obtain the Terminal Railroad's consent to enter its property.

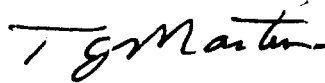
Therefore, U.S. EPA is issuing to you the enclosed "Administrative Order Directing Compliance with Request for Access." Please read the Order carefully and comply with its requirements. Note that within 3 days of your receipt of this Order, you must notify U.S. EPA of your intent to comply fully or not comply with the Order. You may submit written comments on this Order and, per your request, a conference may be held during this 3-day time frame. In any case, the Order will become effective five days after its receipt.

The notice of your intent to comply, as well as any comments you may have, should be sent to me at the following address:

Thomas J. Martin
Office of Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

If you have any questions, please call me at (312) 886-4273. I appreciate your immediate attention to this matter.

Sincerely,



Thomas J. Martin
Associate Regional Counsel

Enclosure

cc: C.R. (Rick) McQueen
Terminal Railroad Association of St. Louis (w/attachment)

Linda Tape (w/attachment)
Colleen Michuda
Thompson Coburn
One Mercantile Center
St. Louis, Missouri 63101-1693

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

) Docket No.

~~V-W-00~~-C-579

)
)
)
Terminal Railroad Association)

ADMINISTRATIVE ORDER

Right of Way at Dead)

DIRECTING COMPLIANCE

Creek)

WITH REQUEST FOR

)
)
Cahokia, Illinois)

ACCESS

Proceeding under Section 104(e) of the Comprehensive
Environmental Response, Compensation and Liability Act of 1980
(CERCLA), as amended by the Superfund Amendments and
Reauthorization Act of 1986 (SARA), 42 U.S.C. § 9604(e).

I. PREAMBLE

This Administrative Order ("Order") is issued to Terminal
Railroad Association ("Terminal Railroad" or "Respondent"), the
present owner of the property located at the intersection of the
Terminal Railroad Right of Way and Dead Creek in Cahokia,
Illinois (the "Site").

This Order is issued pursuant to the authority vested in the
President of the United States by Section 104(e)(5) of CERCLA,
and delegated to the Administrator of the United States
Environmental Protection Agency (U.S. EPA) by Executive Order
No. 12580, 52 Fed. Reg. 2923 (1987), further delegated to the
Regional Administrator by U.S. EPA Delegation No. 14-6, and
further delegated to the Director of the Superfund Division by
Regional Delegation 14-6.

This Order requires Respondent to grant U.S. EPA and its officers, employees, duly delegated representatives, and contractors entry and access to all portions of Respondent's property located at the intersection of the Terminal Railroad line and Dead Creek in Cahokia, Illinois, for the purpose of conducting certain removal actions to address the potential migration of contaminants caused by the overflow of waters from Dead Creek. Dead Creek contains high levels of several hazardous waste, including organic and inorganic chemicals, polychlorinated biphenyls (PCBs) and heavy metals. Dead Creek is prone to flooding during high rainfall events. To alleviate the migration of contaminants via flood events in Dead Creek, U.S. EPA on June 21, 1999, issued pursuant to Section 106 of CERCLA, 43 U.S.C. § 9606, a Unilateral Administrative Order (UAO) to Monsanto Company and Solutia, Inc. (the "UAO respondents") ordering the UAO respondents to make certain storm water and drainage improvements to Dead Creek, including the removal and replacement of the existing undersized culvert at the intersection of the Terminal Railroad Right of Way and Dead Creek in Cahokia, Illinois and any other action necessary, as determined by U.S. EPA, to abate the imminent and substantial endangerment to public health and the environment caused by the release or threat of release of hazardous substances from the Creek.

By copy of this Order, the State of Illinois has been notified of the issuance of this Order.

II. FINDINGS OF FACT

Based upon information available on the date of issuance of this Administrative Order, the Director of the Superfund Division of U.S. EPA, Region 5, makes the following findings of fact:

1. The Terminal Railroad Site ("Site") is located at the intersection of the Terminal Railroad line and Dead Creek in Cahokia, Illinois (See attached map).

2. Dead Creek is part of a Superfund Site known as Sauget Area One. The Sauget Area One Site is currently subject to a separate CERCLA Section 106 Administrative Order on Consent (AOC) signed by U.S. EPA and Solutia and Monsanto Company on January 21, 1999. That AOC requires Solutia and Monsanto to investigate and sample for the presence of hazardous substances on the Site and to propose appropriate measures to remediate the contamination found. The Sauget Area One Site has been proposed by U.S. EPA for inclusion on the CERCLA National Priorities List (NPL) of Superfund Sites.

3. Dead Creek historically has been a repository for local area wastes. On December 21, 1928, an easement agreement between local property owners and representatives of local business, municipal and property interests was executed to "improve the drainage in that District (Dead Creek) by improving Dead Creek so as to make it suitable for the disposal of wastewater, industrial waste, seepage and storm water." Thereafter, Dead Creek

systematically received direct and indirect discharges from local businesses and municipalities for many years to come.

4. Information on the types of wastes disposed of and the types and levels of contamination found at the Sauget Area One Site, including wastes and contamination found in Dead Creek, have been provided to U.S. EPA from various sources including, but not exclusively from: 1) CERCLA 103(c) Submittals; 2) CERCLA 104(e) Responses; 3) Expanded Site Investigation Dead Creek Project Sites (E&E, 1988), 4) Removal Action Plan for Dead Creek Sites (Weston-SPER, 1987); 5) Description of Current Situation at the Dead Creek Project Sites (E&E, 1986); 6) Site Investigations for Dead Creek Sector B and Sites L and M (Geraghty & Miller, Inc. 1992); 7) Site Investigation/Feasibility Study for Creek Segment A (Advent Group, 1990), 8) Preliminary Ecological Risk Assessment for Sauget Area 1, Creek Segment F (E&E 1997); 9) EPA Removal Action Report for Site G (E&E 1994); 10) Area One Screening Site Inspection Report; and 11) Site Investigation Feasibility Study for Creek Segment A (Advent Group 1990).

5. Dead Creek stretches from the Alton & Southern Railroad at its northern end and flows south through Sauget and Cahokia for approximately 3.5 miles before emptying into the Old Prairie du Pont Creek, which flows approximately 2,000 feet west into a branch of the Mississippi River known as the Cahokia Chute. For sampling purposes, Dead Creek is subdivided into six separate

segments labeled Creek Segment A through F (CS-A through CS-F).

The segments are further described as follows: —

6. Creek Segment CS-A is the northernmost segment of the creek and it is approximately 1,800 feet long and 100 feet wide running from the Alton & Southern Railroad to Queeny Avenue. This segment of the creek originally consisted of two holding ponds which were periodically dredged. For several years, CS-A and downstream creek segments received direct and indirect wastewater discharges from industrial and municipal sources. In 1968, the Queeny Avenue culvert, which allowed creek water to pass from CS-A to CS-B, was permanently blocked by the Village of Sauget. Remediation work was conducted by Cerro Copper in CS-A in 1990.

7. Creek Segment CS-B extends for approximately 1,800 feet from Queeny Avenue south to Judith Lane. Sites G, L, and M of the Sauget Area One Site border this creek segment. Land use surrounding CS-B is primarily commercial with a small residential area near the southern end of this segment. Agricultural land lies to the west of the creek and south of Site G. In 1965, the Judith Lane culvert, which allowed creek water to pass from CS-B to CS-C, was blocked.

8. Creek Segment CS-C extends for approximately 1,300 feet from Judith Lane south to Cahokia Street. Land use is primarily residential along both sides of CS-C.

9. Creek Segment CS-D extends for approximately 1,100 feet from Cahokia Street to Jerome Lane. Land use is primarily residential along both sides of CS-D.

10. Creek Segment CS-E extends approximately 4,300 feet from Jerome Lane to the intersection of Illinois Route 3 and Route 157. Land use surrounding CS-E is predominantly commercial with some mixed residential use. Dead Creek temporarily passes through corrugated pipe at the southern end of CS-E.

11. Creek Segment CS-F is approximately 6,500 feet long and extends from Route 157 to the Old Prairie du Pont Creek. CS-F is the widest segment of Dead Creek and a large wetland area extends several hundred feet out from the both sides of the creek. The culvert subject to this Order Directing Access is located near the northern section of Dead Creek Segment F.

12. Surface water samples collected by U.S. EPA and the Illinois EPA have detected a wide variety of: volatile and semi-volatile organic compounds, including but not limited to elevated levels of toluene (20 ppb), chlorobenzene (33 ppb), phenols (28 ppb), naphthalene (8 ppb), pentachlorophenol (120 ppb) and PCBs (44 ppb); pesticides, such as dieldrin (.18 ppb) and 4,4-DDT (.24 ppb); and heavy metals, such as arsenic (31 ppb), cadmium (25 ppb), chromium (99 ppb), mercury (8.6 ppb), copper (17,900 ppb), zinc (10,300 ppb), and lead (1,300 ppb).

13. Dead Creek sediment samples collected by U.S. EPA and the Illinois EPA have detected a wide variety of volatile and

semi-volatile organic compounds in the creek sediments, including but not limited to elevated levels of benzene (87 ppb), toluene (810 ppb), chlorobenzene (5,200 ppb), xylenes (540 ppm) and PCBs (10,000 ppm); as well as heavy metals, such as arsenic (6,000 ppm), cadmium (400 ppm), mercury (30 ppm), copper (44,800 ppm), zinc (71,000 ppm), and lead (24,000 ppm).

14. Several of the culverts on Dead Creek are inadequately sized, blocked or partially blocked with debris and thereby cause storm water in Dead Creek to back up behind these culverts and, at times, overflow into surrounding residential areas.

15. Dead Creek and the areas surrounding the Creek are located within an area known as the American Bottoms, which is the flood plain for the Mississippi River. The water table in this area is very close to the ground surface and during storm events the soils quickly become saturated. During these same storm events, water backing up behind blocked or inadequately sized culverts in Dead Creek overflows and increases the severity of flooding conditions for nearby residents in Sauget and Cahokia. Contaminants, including hazardous substances, pesticides and heavy metals, in both surface water and sediments may migrate via the overflow and flood waters onto the properties of neighboring residents.

16. U.S. EPA issued to Monsanto and Solutia the June 21, 1999, UAO referenced in the Preamble above based on the following

conditions present at the site constituting an imminent and substantial threat to public health, welfare and the environment:

- A. Actual or potential exposure to hazardous substances or pollutants by nearby populations or the food chain.

This condition exists at the Site due to the high levels of organic and inorganic contaminants found in the sediments and surface water of Dead Creek which could potentially be released into residential areas via flood waters banking up behind blocked or inadequately sized culverts. Some of the contaminants in Dead Creek are known carcinogens or suspected carcinogens. Contaminants potentially migrating from Dead Creek via overflow and flood waters to nearby residential areas are accessible to humans, specifically the residents and children who live and play on these potentially affected properties. These individuals could potentially be exposed to the contamination by direct skin contact with the sediments and surface water released from Dead Creek.

- B. Weather conditions that may cause hazardous substances or pollutants to migrate or be released. This factor is present at the Site due to the fact that high levels of organic and inorganic contaminants are located within the sediments and surface water of Dead Creek. Blocked and/or inadequately sized culverts on Dead

Creek often cause flood waters to back up behind these culverts and then overflow into nearby residential — areas. This area of St. Clair County is particularly prone to flooding due to a very shallow groundwater table. Storm water backing up behind culverts exacerbates the flooding conditions in this area.

18. The Unilateral Order ordered the UAO respondents to perform, at a minimum, the following response activities:

- A. Prepare a Time Critical Removal Action Plan and implement the Removal Action to access and mitigate the treats posed by the migration of contaminants via overflow and flood waters from the Site, as described in Section III, "Findings of Fact" of the UAO. This Time Critical Removal Action Work Plan ("Work Plan") shall describe the plan for replacing current culverts on Dead Creek with pre-cast concrete culverts sized to convey water from one creek segment to the next without build up under flood conditions. Removal and replacement of the culverts shall be done in a manner and minimizes the disturbances of sediments in Dead Creek and prevents the movement of sediments from one segment to the next. Also, the new culverts shall be designed to operate so as to minimize the amount of sediment migration from one creek segment to the next. The work plan shall also include a hydraulic study of

the Dead Creek watershed to determine 100-year flood elevations and flow design requirements for the culvert replacement project. The work plan shall also provide for the replacement of all roadways disturbed by the culvert replacement project in accordance with Department of Transportation requirements for dead and live-bearing weight. This Work Plan shall also include a Health and Safety Plan.

- B. If the culvert replacement project involves the excavation of contaminated sediments or the pumping of creek water, these media must be properly disposed of at a RCRA/CERCLA or TSCA approved disposal facility in accordance with the EPA off-site disposal rule found at 40 C.F.R. § 300.440.

19. Pursuant to the findings of hydrologic studies conducted by the UAO respondents pursuant to the UAO, Respondent's culvert located at the intersection of the Terminal Railroad Right of Way and Dead Creek was determined to be undersized and a contributing cause of upstream flooding of Dead Creek.

20. A subsequent hydraulic analysis conducted by the UAO respondents concluded that flooding would be reduced if Respondent's culvert were increased to a vertical height of not more than 72 inches.

21. Despite several attempts over the course of two months to negotiate the terms of an acceptable access agreement with the Respondent, the UAO respondents, despite good faith efforts, have been unable to acquire Respondent's voluntary consent for access to its property to conduct work required by the UAO.

III. DETERMINATIONS OF LAW

Based upon information available on the date of issuance of this Administrative Order, the Superfund Division Director of U.S. EPA, Region 5, makes the following Determinations of Law:

1. The Terminal Railroad Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. The contaminants in the waters and sediments of Dead Creek, including but not limited to benzene, toluene, chlorobenzene, PCBs, arsenic, cadmium, chromium, copper, zinc, and lead; are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and as specified in 40 C.F.R. § 302.4, and have been deposited, stored, disposed of, placed, or otherwise located at and around the Terminal Railroad facility.

3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent is the present "owner" of the Terminal Railroad Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The presence of hazardous substances at the facility or the past, present or potential migration of hazardous substances currently located at or emanating from the facility constitutes a reasonable basis to believe that there may be a "release" or substantial threat of "release," as defined in Section 101(22) of CERCLA, into the environment of a hazardous substance from or at the facility.

6. Access to the Respondent's property is necessary to effectuate a response action, including performing certain storm water and drainage improvements along Dead Creek to protect human health and welfare and the environment.

IV. ORDER

Based upon the foregoing Findings of Fact and Determinations of Law, it is hereby ordered that Respondent comply with U.S. EPA's request for access to the Respondent's property described in Paragraph 1 of the Findings of Fact, above, pursuant to Section 104(e) of CERCLA, in accordance with Paragraphs 1 through 5 below:

1. Respondent shall grant the U.S. EPA and its officers, employees, duly designated representatives, and contractors, including, but not limited to employees, agents or contractors of Monsanto and Solutia, access to the above described property for the purpose of conducting certain removal actions to address the potential migration of contaminants caused by the overflow of waters from Dead Creek as required by the June 21, 1999 UAO.

Specifically, the UAO respondents propose to make certain storm water and drainage improvements to Dead Creek, including the — removal and replacement of Respondent's undersized culvert located in Cahokia, Illinois. Such culvert will be replaced with a culvert with a vertical maximum dimension of approximately 72 inches. Pursuant to the terms of the UAO, the removal and replacement of the culvert shall be done in a manner that minimizes the disturbances of sediments in Dead Creek and prevents the movement of sediments from one segment to the next. Also, the work plan will also provide for the replacement of all roadways or other property disturbed by the culvert replacement project in accordance with applicable requirements. Finally, if the culvert replacement project involves the excavation of contaminated sediments, the UAO requires Monsanto and Solutia to properly dispose of such matter at a RCRA/CERCLA or TSCA approved disposal facility in accordance with the EPA off-site disposal rule found at 40 C.F.R. § 300.440.

2. Respondent shall provide access to Respondent's property for the length of time required to complete the actions described above and any additional work U.S. EPA determines to be necessary to complete these actions.

3. Respondent shall allow entry to its property for activities at all reasonable times, as required by section 104(e)(3) of CERCLA.

4. This Administrative Order shall be binding on all employees, agents, successors and assigns of Respondent. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of any interest in any property which includes an access area, Respondent or Respondent's agents, heirs, successors and assigns, shall convey the interest so as to insure continued access by U.S. EPA and/or its representatives for purposes of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of such property so that use will not interfere with activities undertaken pursuant to this Order. Respondent, or Respondent's agents, heirs, successors and assigns, shall notify U.S. EPA at least (30) thirty days before any such conveyance of an interest in property where an access area is located, and shall notify the other parties involved in the conveyance prior to the transfer of the provisions in this Order.

5. Any action taken by Respondent to deny access to U.S. EPA and its officers, employees, duly designated representatives, and contractors, for the purpose of performing actions described in paragraph 1 above, or any attempt to interfere with the actions deemed necessary to complete these actions, shall be deemed a violation of this Administrative Order.

6. Nothing in this Order is meant to limit in any way any right of access to this property which U.S. EPA, the State of

Illinois, and/or local governmental agencies, may have under any statute, regulation or agreement. —

V. CONFIDENTIAL BUSINESS INFORMATION

Respondent is hereby advised that, consistent with 18 U.S.C. § 1905, it may assert a confidentiality claim with respect to any information obtained by U.S. EPA in the course of activities performed on its property under the authority of this Administrative Order. Information accorded protection by 18 U.S.C. § 1905 includes information relating to or concerning trade secrets, processes, operations, style of work, or apparatus, confidential statistical data, or to the identity, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation or association. Any such claim will be handled by U.S. EPA in accordance with the Confidential Business Information regulations, found at 40 C.F.R. § 2.201 et seq.

VI. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Findings and Determinations is available for review by appointment on weekdays between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, U.S. EPA, Region 5. Please contact Thomas Martin, Associate Regional Counsel, at (312) 886-4273 to make an appointment to review the Administrative Record. —

VII. EFFECTIVE DATE OF ORDER AND OPPORTUNITY TO CONFER

1. This Order shall become effective on the fifth day after it is received by the Respondent.

2. Respondent may request a conference with U.S. EPA to discuss this Order. The conference may be held by telephone. Respondent may appear by an attorney or other representative. Any such conference shall take place within 3 days of Respondent's receipt of the Order. Respondent should contact Thomas Martin, Associate Regional Counsel, at (312) 886-4273 to arrange such a conference.

3. Any comments that Respondent may have regarding this Order, its applicability to Respondent, the correctness of any factual determination upon which the Order is based, or any other relevant and material issue may be reduced to writing and submitted to U.S. EPA within 3 days of Respondent's receipt of this Order. Any such comments should be sent to Thomas Martin, Office of Regional Counsel (MAIL CODE C-14J), U.S. EPA - Region 5, 77 West Jackson Street, Chicago, Illinois 60604.

VIII. NOTICE OF INTENTION TO COMPLY

Whether or not Respondent requests a conference with U.S. EPA, Respondent must notify U.S. EPA within 3 days of receipt of the Order of its intent to comply fully or not comply with the Order. Respondent shall provide written notice to U.S. EPA stating whether it intends to comply with the terms hereof. Such notice shall be sent by overnight carrier, return receipt

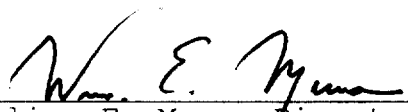
requested, to Thomas Martin, Office of Regional Counsel (C-14J), U.S. EPA - Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. Failure to provide such timely notice shall be deemed to be a refusal to grant access, constituting noncompliance with the terms of the Order.

IX. PENALTIES FOR NONCOMPLIANCE

Respondent is hereby advised that, pursuant to Section 104(e)(5)(B) of CERCLA, a Court may assess a civil penalty not to exceed \$27,500 per day for each day that a Respondent unreasonably fails to comply with this Order or any part hereof.

IT IS SO ORDERED this 2nd day of February, 2000.

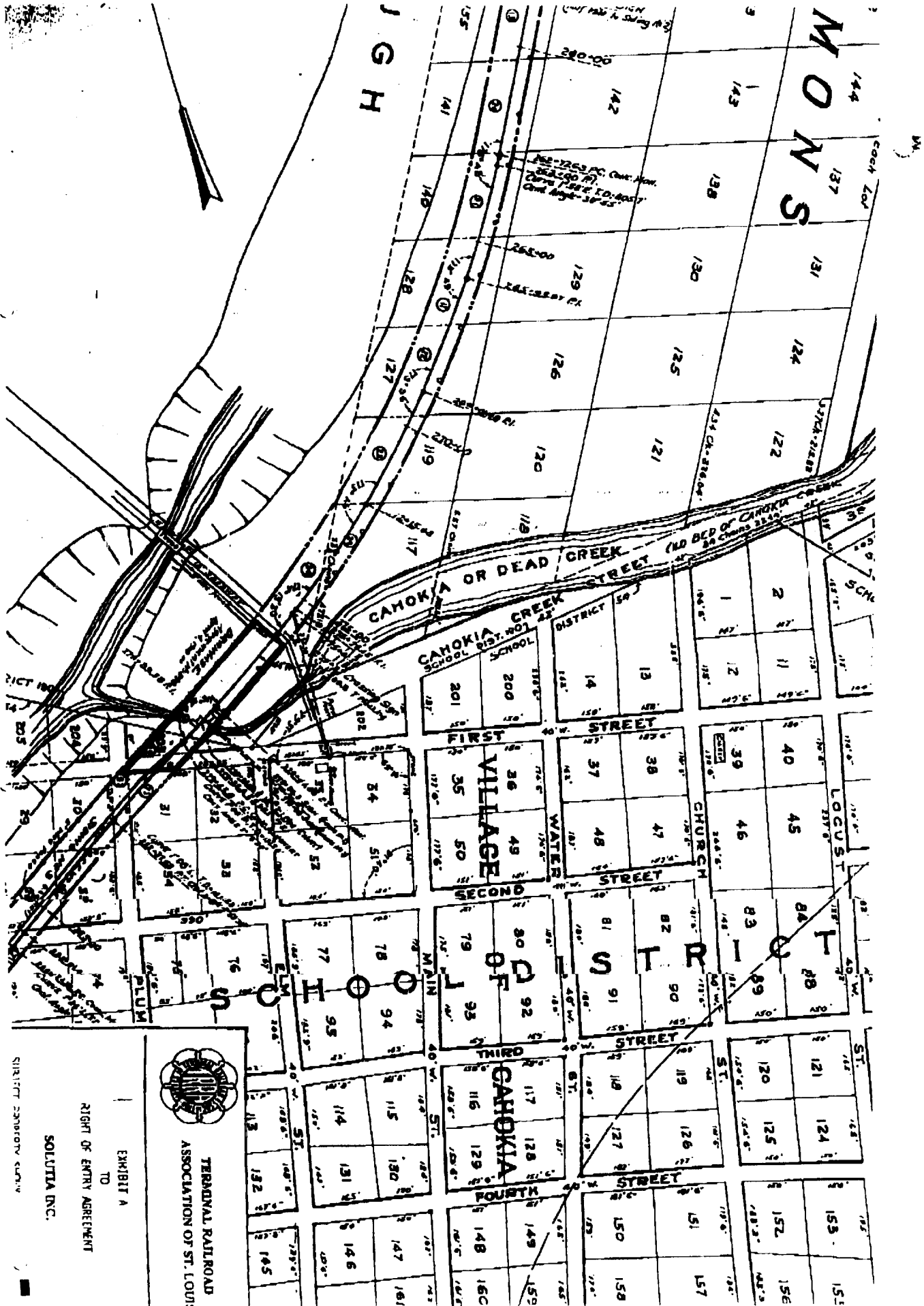
By:



William E. Muno, Director
Superfund Division
United States Environmental
Protection Agency
Region 5

ATTACHMENTS:

1. Map of Site
2. Administrative Record Index



Administrative Record Index

- a. ATSDR Health Report dated August 24, 1994
- b. Expanded Site Investigation Dead Creek Project Sites (E & E, 1988)
- c. Removal Action Plan for Dead Creek Sites (Weston-SPER, 1987)
- d. Description of Current Situation at the Dead Creek Project Sites (E & E, 1986)
- e. Site Investigations for Dead Creek Sector B and Sites L and M (Geraghty & Miller, Inc. 1992)
- f. Preliminary Ecological Risk Assessment for Sauget Area 1, Creek Segment F (E & E, 1997)
- g. Sauget Area 1 and 2 Sites - Data Tables/Maps (E & E, 1998)
- h. ~~EPA Removal Action Report for Site G (E & E, 1994)~~
- i. Area 1 Screening Site Inspection Report
- j. Site Investigation/Feasibility Study for Creek Segment A (Advent Group, 1990)
- k. January 21, 1999, CERCLA Section 106 Administrative Order on Consent
- l. June 21, 1999, CERCLA Section 106 Unilateral Administrative Order